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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

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MAR 26 2004

[redacted]

FILE: [redacted] Office: ORLANDO, FL Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must [redacted]

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant married a naturalized citizen of the United States on July 26, 1995 in Miami, Florida. On October 20, 1999, the applicant and his U.S. citizen spouse were divorced. The applicant seeks the above waiver of inadmissibility in order to remain in the United States.

The acting district director found that based on the evidence in the record, the applicant had failed to establish the requisite relationship to be eligible for a waiver. The application was denied accordingly. *See* Decision of the Acting District Director, dated April 16, 2003.

On appeal, counsel contends that the Immigration and Naturalization Service [Citizenship and Immigration Services] erred in denying the applicant's waiver application. Counsel asserts that the grounds of inadmissibility under section 212(a)(6)(C)(i) of the Act do not apply to applicants for adjustment under the Haitian Refugee Immigration Fairness Act of 1998. *See* Appeal and Motion to Reconsider, dated May 14, 2003.

The record contains a letter from the Kissimmee Police Department, dated July 12, 2002; the results of a record check request from the Osceola County Sheriff's Office, dated July 12, 2002; a copy of the marriage license of the applicant and his current spouse; copies of financial and tax documents for the applicant and a copy and translation of the Haitian birth certificate of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to procure entry into the United States on or about April 2, 1995, by presenting an immigration officer at Miami, Florida with a photo-substituted Haitian passport. The applicant was paroled into the United States for exclusion proceedings.

Counsel points to 22 CFR § 40.63 to support the assertion that that applicant is not rendered inadmissible by his presentation of a photo-substituted passport. The Code of Federal Regulations states, in part, that fraud and misrepresentation allegations under section 212(a)(6)(C) of the Act are not applicable, "if the fraud or misrepresentation was committed by an alien at the time the alien sought entry into a country other than the United States or obtained travel documents as a bona fide refugee and the refugee was in fear of being repatriated to a former homeland if the facts were disclosed in connection with an application for a visa to enter the United States...." The AAO finds that these circumstances do not apply to the applicant's willful misrepresentation to an immigration officer on April 2, 1995. The assertions of counsel on appeal are rendered unpersuasive as the applicant committed fraud in order to obtain entry to the United States, not a country other than the United States and the applicant did not obtain his fraudulent passport as a bona fide refugee as provided by 22 CFR § 40.63.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to *the citizen or lawfully resident spouse or parent of the applicant*. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings.

The record demonstrates that the applicant is divorced from his prior naturalized U.S. citizen spouse and the applicant's current spouse is not a citizen or lawful permanent resident of the United States. Therefore, the AAO finds that the applicant has not established a relationship with a qualifying relative as required by section 212(i) of the Act and therefore, based on the record, the applicant is ineligible for a waiver of his inadmissibility to the United States.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.